

## Comparative Study of the Regulation and Planning of National Capital Authority-Owned Enterprises in Realizing Sustainable Development of the Nusantara's Capital City

Diani Sadiawati<sup>1</sup>, Rianda Dirkareshza<sup>2</sup>, and Muhammad Fauzan<sup>3</sup>

Corresponding author. Email: dianisadiawati@upnvj.ac.id

---

Submitted: 2024-07-03 | Accepted: 2024-08-30 | Published: 31<sup>st</sup> August 2024

---

### *Abstract*

After the stipulation of Presidential Decree no. 62 of 2022 concerning the Nusantara Capital Authority, the Authority can have power over business entities which is characterized by share control and ownership of shares of a business entity so that it becomes the domain of the IKN Authority in its management. However, in reality, adequate regulations to accommodate the formation and planning of the Authority-Owned Business Entity itself are not yet in place. This research aims to find out how business entities owned by the state capital are regulated and planned in a comparative perspective and what the ideal concept of regulation and planning of authority owned business entities is in realizing sustainable development of the Nusantara Capital City. The research used normative juridical with a statutory approach, comparative approach and conceptual approach. The research results show that the concepts of the three countries are different. The concept from Australia requires the formation of a state-owned enterprise through the law of its capital region, namely the Territorial State-owned Corporation Act 1990. Meanwhile, India uses a registration mechanism by injecting funds from the government to mark it as a government-owned company according to its level in accordance with the provisions of the Company Law of India, 2013. Then China acknowledged the existence of controlling and non-controlling shares in government control as regulated in the Law of State-owned Assets Enterprise 2018 Revision. In this case, Indonesia can adopt it by establishing an authority-owned business entity using regulations from the head of the authority that are regulatory and based on sustainable development. In this way, the next generation can experience the development results of the authority's business entities.

**Keywords:** authority-owned enterprises; Capital City of Nusantara; sustainable development.

---

---

<sup>123</sup> Faculty of Law, Universitas Pembangunan Nasional "Veteran" Jakarta

## I. Introduction

Every government always wants to leave a memorable legacy so that it can be remembered and included in the historical record that it is a successful and successful leader. The process of building legacy is also implemented by President Joko Widodo (Jokowi), one of which is by moving the capital city from Jakarta to the Nusantara Capital City (IKN) of Nusantara located in Penajam Paser Utara Regency and Kutai Kartanegara Regency, East Kalimantan (Mustaqim, 2022). The construction of a new national capital is immediately a major project that requires careful and planned planning. The authority of the head of the authority is one of the important factors that must be considered in the preparation of planning for the development of the new national capital. This includes the authority to form an Authority-Owned Enterprise to develop the economy and advance the IKN itself.

The relocation of the national capital has several reasons: First, there is about 57 percent of the population on the island of Java. Second, economic equalization between islands to the national Gross Domestic Product (GDP). Third, the availability of water on the island of Java, especially DKI Jakarta and East Java. Fourth, land conservation is scattered on Java Island. Fifth, very high urbanization growth in DKI Jakarta. Sixth, the increasing burden on Jakarta resulting in a decrease in environmental carrying capacity and the magnitude of national losses. Seventh, IKN Nusantara must also consider disaster mitigation. Eighth, the development of smart cities in IKN Nusantara which is a central issue because it is considered a modern and environmentally friendly city (Rachmawati et al., 2021). Ninth, realizing good governance in the capital relocation plan requires the government to have a visionary capital planning and development pattern. Tenth, realizing good governance in the capital relocation plan requires the government to always make the principles of good governance. Based on the 10 (Ten) reasons put forward by various researchers and practitioners, it is necessary to prepare an IKN Nusantara development plan that is right on target to achieve all of these reasons.

In developing IKN, of course, a business entity instrument is needed to support it. Article 1 point 17 of Presidential Regulation Number 62 of 2022, defines what is meant by the Authority Business Entity, namely a state-owned business entity whose shareholder power is given to the Nusantara Capital Authority, a business entity whose shares are wholly or mostly owned by the Nusantara Capital Authority, and / or a business entity in the form of a limited liability company whose shares are partly owned by the Nusantara Capital Authority (President of Indonesia, 2022). Especially after the amendment to the IKN Law in Law Number 21 of 2023 concerning Amendments to Law Number 3 of 2022 concerning the National Capital City which allows the participation and formation of business entities specifically owned by the Nusantara Capital City Authority in carrying out the development and development of the Nusantara Capital City area (Republic of Indonesia, 2023). However, the concept of funding and distribution of shares of ownership of the mllik otorita business entity has not been regulated in the legislation so that the concept of sharing shares of ownership of the business entity does not exist.

The concept of the regulation requires the definition of an Authority Business Entity as a state-owned business entity whose shareholders are all the authorities themselves, it can also be a business entity whose shares are wholly or partly owned by the authorities, or the last is a limited liability company whose shares are partly owned by the National Capital Authority. The essence of the Authority as a master developer, owner or business owner and

or act as an operator in accordance with business and service needs in the context of preparation, development and relocation of the National Capital City (President of Indonesia, 2022).

The concept of the entity of the authoritative business entity will also have an effect on the presence of the state in order to realize the welfare of its citizens. The presence of business entities will also monopolize several essential and fundamental affairs in order to realize prosperity and welfare for the people in the State Capital itself. The status of the welfare state itself has become the main characteristic of all countries that claim to be a modern legal state, namely the duty of the state in addition to protecting its citizens also has the main task as the organizer of public welfare (Syahnaz, 2021). In addition, the obligation of the Indonesian state in providing welfare for its citizens is also supported by normative provisions for the state to be able to control various natural resources for the greatest prosperity of the people as stipulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which reads that “*The land, water and natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people*”. Thus, the presence of an Authority-Owned Business entity will bring prosperity to the people and the presence of the state in it to organize public services.

However, in terms of the concept of funding and injecting funds, the Australian Capital Territory (ACT) or the City of Canberra has already done so when viewed in terms of country comparisons. Australia in the Territorial-owned Enterprise Act of 1995 has comprehensively regulated the funding and share composition of the ownership of the territorial-owned enterprise of the national capital (Akimov & Simshauser, 2020). The concept extends to the planning and implementation of the authority's powers and the establishment of the enterprise called Icon Water, a water company in the ACT. In addition, in India there is a company directly owned by the Government of Delhi or the city government of Delhi as the capital of the Indian Federation, namely the Delhi Metro Rail Corporation (DMRC) whose ownership shares are dominated by the City Government of New Delhi and is engaged in rail transportation (Choudhury & Gupta, 2023). Then when looking at China, especially the city of Beijing as the capital, which has a variety of companies whose funding comes from Beijing itself, one example of a company is Shougang Group Co., Ltd. which is 80% owned by the Beijing City Government. The company operates in the field of steel textiles. Of the three companies, it can be seen that both are engaged in the public service sector and are essential so that the presence of the state in it has the aim of prospering its people and advancing welfare.

The preparation of planning for the preparation and development of the Nusantara's IKN is one of the authorities that must be carried out by the government to ensure the continuity and progress of the development of the Nusantara's Capital, which includes the plan to establish an Authority Business Entity. However, in reality, the preparation of planning for the development of the Nusantara Capital City often experiences problems related to the authority of the head of the authority itself (Nugrohosudin, 2022). Problems with the authority of the Head of OIKN in the preparation of new Nusantara Capital development planning can come from various factors, such as disharmonization of laws and regulations, lack of agreement between stakeholders, lack of good coordination between agencies, or lack of transparency in the planning process. Thus, it is necessary to have a regulation that specifically regulates the authority of the head of the authority regarding the

management of the Authority Business Entity itself in order to fill the legal needs of the authority of the Head of OIKN in establishing the Authority Business Entity.

The government as the holder of authority in the preparation of IKN Nusantara development planning must be able to provide appropriate support so that the preparation of the plan can run well and does not experience problems with the authority of the head of the authority (Fauzi & Sujadi, 2023). The support provided by the government can be in the form of clear arrangements regarding the authority of the head of the authority in the preparation of the IKN Nusantara development plan, as well as an effective mechanism for regulating and controlling this authority (Musu et al., 2022). In addition, the government can also provide support by improving coordination and communication between agencies involved in the preparation of new state capital development planning, and increasing transparency in the planning process. This includes the formation of a planned and structured BUMO based on existing indicators and stipulated in the Regulation of the Head of the Authority itself (Sulistiono & Wardana, 2023). The regulatory concept must also extend to the concept of the composition and distribution of shares in the BUMO itself. Thus, it is expected to avoid the problematic authority of the head of the authority in the preparation of development planning for the Nusantara capital and the establishment of BUMO in order to realize sustainable development in the Capital City of the Nusantara.

Previous research that has been published by Ervin Nugrohosudin with the title "The Position of the Head of the Nusantara Capital Authority" in the accredited Legislative Journal. The result of his research is that the relocation of the national capital from Jakarta to Kalimantan Island will have implications for changing the structure of government administration in the new capital city. The relocation of the national capital is legitimized through Law Number 3 of 2022. Referring to Article 8 of Law Number 3 of 2022, it states that the Nusantara Capital Authority is the organizer of the Special Regional Government of the Nusantara Capital City led by the Head of the Nusantara Capital Authority. Referring to Article 5 paragraph (4) of Law Number 3 of 2022, the position of the Head of the Nusantara Capital Authority is equivalent to the Minister. The appointment and dismissal process is based on the authority of the president in consultation with the DPR. The existence of a new government system in the form of the establishment of the Nusantara Capital Authority with the Head of the Authority as the highest leader, is expected to form a visionary governance and bring changes to the new National Capital (Nugrohosudin, 2022).

Next in the National Journal with the title "Form and Specificity of the Nusantara State Capital in the Unitary State of the Republic of Indonesia" written by Doni Nugroho. As for the results of the research conducted by Doni, the development of IKN Nusantara will create a new economic growth center that aims to encourage economic transformation in Indonesia. So that IKN Nusantara is given specificity in order to provide convenience in doing business. Therefore, the use of the head of the Nusantara's capital authority is a way carried out by the government to speed up the issuance of licenses and investments. In addition, the absence of DPRD in IKN Nusantara is a weak supervision in IKN Nusantara because the DPR RI will carry out supervisory functions in IKN Nusantara. Then, the source of funds in the construction of the IKN Nusantara is the majority of domestic or foreign investment so that the IKN Nusantara will create a new economic cluster in the Republic of Indonesia. Therefore, the development of IKN Nusantara should not be just a mere desire without paying attention to other aspects (Nugroho, 2022).

In an International Journal published in the Atmosphere Journal with the publisher MDPI with the title “Moisture Origin and Transport for Extreme Precipitation over Indonesia's New Capital City, Nusantara in August 2021” written by Anis Purwaningsih and friends. The research suggests moisture transport and sources responsible for extreme precipitation events over Indonesia's new capital city, Nusantara, on August 27-28, 2021, based on the HYSPLIT model using reanalysis of ERA-5, satellite, and in situ data. Our main findings in this study are summarized as follows: The moisture responsible for the extreme precipitation event in the Nusantara on August 27-28, 2021 was transported through three dominant routes: BRN, with a contribution of 53.73%; BSS, with a contribution of 32.03%; and SUL with a contribution of 9.05%. associated with La Niña modulated moisture propagation from eastern Indonesia. Results indicate the importance of land and ocean moisture sources from BNN and SUL as well as BSS for the formation of extreme precipitation events in the Nusantara, Indonesia (Purwaningsih et al., 2022).

In the nationally accredited Journal of Legal Dynamics there is a similar article with the title “Juridical Overview of the Mechanism for the Forest Area Release and Investment Facilities for Infrastructure Development in Nusantara Capital City” published by haibati haira and friends. The journal article states that infrastructure development in the Nusantara Capital City meets the strategic element of the goal that the utilization of forest areas for development purposes outside of forestry activities can be carried out in production forest areas and protected forest areas. However, Appendix II of Law 3/2022 has stipulated that HPK will be used for regional forest release. Furthermore, the Nusantara Capital Authority as the organizer of the Nusantara Capital special area is authorized to carry out land acquisition in the Nusantara Capital through a forest area release mechanism. The mechanism for releasing regional forests in HPK is carried out following the provisions in PP 23/2021 by first submitting an application for approval of forest area release submitted to the Minister of Environment and Forestry, which is then carried out by an integrated research team. The Minister of Environment and Forestry reviews the fulfillment of administrative and technical requirements and commitments. Based on the research on the requirements and recommendations of the integrated team, the Minister of Environment and Forestry issues a decision on approval of forest area release for part or all of the area (Haira et al., 2022).

Furthermore, in the international journal The Australian Economic Review with the title “A Survey of the Privatization of Government-Owned Enterprises in Australia since the 1980's written by Malcolm Abbot and Bruce Cohen. The article states that the privatization of government-owned enterprises has been running since 1980 in various industrial sectors. In the study, it can be said that in terms of efficiency improvements, some privatizations clearly show success. But in other cases, most of the efficiency gains occurred after corporatization, rather than after privatization. In most cases, efficiency gains may also be due to regulatory reforms, increased competition, and multifaceted (and sometimes substantial) technological change, most notably in the privatization of Icon Water, which was previously owned by the Australian Capital Territory (ACT) government, but is now owned by three companies. Still, ACT has the largest shareholding, at 50% of the total (Abbott & Cohen, 2014). Based on the background that has been explained, the author will discuss two problems that become the main discussion. First, how is the regulation and planning of the Authority Business Entity in which there is an Authority-Owned Business Entity in a comparative perspective? Second, what is the concept of regulation and planning

of the ideal Authority-owned business entity in realizing the sustainable development of the Nusantara's Capital City?

## II. Methods

The method used in this research is normative juridical. The normative juridical method is a research method that also uses secondary data as the main material in finding answers to existing problems, such as the existence of legal facts, legal regulations, cases that have occurred in the past, and other legal materials (Marzuki, 2017). The types of approaches used in this research are the statutory approach, conceptual approach, and comparative approach. The legislative approach is an approach used by examining and comparing several pieces of legislation. The laws and regulations used in this research are the Law on Amendments Concerning the National Capital City, the Presidential Regulation of the National Capital Authority, the Law on State-Owned Enterprises, and the Law on Limited Liability Companies. Then, the conceptual approach in this research is to conceptualize the preparation of harmonious development planning between the regulatory concepts found in other countries and the ideal concept for Indonesia in terms of regulating the Authority-Owned Enterprise itself. Apart from that, the conceptual approach is also very strong with the use of doctrine and theory in it. In this research, researchers use theories related to the welfare state and sustainable development goals (SDGs) to look at the sustainability aspects of the arrangements that will be conceptualized in this research. Then, the comparative approach is an approach that uses regulatory concepts from other countries, whether in the form of statutory regulations, legal system concepts, jurisprudence, or positive legal systems that apply in other countries (Lukito, 2022). When conceptualized in this research, this comparative approach will be carried out by comparing the concept of Indonesia with other countries regarding the concept of planning and regulation regarding Authority-Owned Enterprises. The data analysis technique is carried out descriptively qualitatively and processed qualitatively. The data obtained as a result of the statutory and conceptual approaches will be analyzed qualitatively in order to obtain the meaning contained in the facts found in data collection. Apart from that, this research will also provide prescriptive suggestions and recommendations (Nasution, 2008).

## III. Results, Analysis, and Discussions

### 3.1. Regulation and Planning of National Capital-Owned Enterprises in a Comparative Perspective

The prospect of the development of the capital city of the Nusantara cannot be separated from the role of the state in it, especially the role of the central government itself. Since the position of the Head of the Nusantara Capital Authority itself is equal to a minister and is appointed and dismissed by the President, it can be said that the role and position of the planning of the development of the national capital cannot be separated from the role of the central government, especially the President (Aisyah & others, 2024). However, the concept of independence of the national capital region in determining the rules of the game of its government is guaranteed in Article 5 paragraph (6) of Law No. 3 of 2022 concerning the National Capital which reads that "The Nusantara Capital Authority has the right to establish regulations to organize the Special Regional Government of the Nusantara Capital

and / or carry out preparation, development and relocation activities of the National Capital”. Thus, although structurally the Head of the Authority is under the President, in exercising its authority, especially in managing the national capital region, the Head of the Authority is guaranteed independence, including advancing the economy and monopolizing strategic sectors through the Authority's business entities.

The Government of the Nusantara Capital Authority, through the Head of the Authority, is given the authority to form an authority-owned business entity which in terms of funding through the State Budget as stated in Article 24 paragraph (7) of Law No. 21 of 2023 concerning Amendments to Law No. 3 of 2022 concerning the National Capital which reads that “Funding for the preparation, development and relocation of the National Capital sourced from the State Budget as referred to in paragraph (1) letter a, which can be in the form of providing additional state equity participation to the business entity of the National Capital Authority, is carried out through the mechanism of the State Budget”. This concept provides an understanding that business entities owned by the Authority can be funded by the State Budget in addition to being fully controlled by the Authority government or a combination of shares between the Authority government and the central government through the State Budget.

In terms of share composition, Presidential Regulation No. 62/2022 has explained how the share composition of the authoritative state-owned enterprise itself. The share ownership of the government is important considering that the nature of state-owned enterprises is the holder of control over commodities that are central and included in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Presidential Regulation No. 62/2022, especially in Article 1 number 17 of the Presidential Regulation, explains the composition of shares in the authoritative business entity which reads that “The Nusantara Capital Authority Business Entity, hereinafter referred to as the Authority Business Entity, is a state-owned business entity whose shareholder power is given to the Nusantara Capital Authority, a business entity whose shares are wholly or mostly owned by the Nusantara Capital Authority, and/or a business entity in the form of a limited liability company whose shares are partly owned by the Nusantara Capital Authority”. From this explanation, an entity can be said to be a business entity owned by the Authority when: a) a state-owned enterprise whose shareholder power is given to the Nusantara Capital Authority; b) a business entity whose shares are wholly or mostly owned by the Nusantara Capital Authority; and/or c) a business entity in the form of a limited liability company whose shares are partly owned by the Nusantara Capital Authority. The concept of these three things is optional and is given entirely to the needs of the state or the Head of the Authority in determining economic policy.

Indonesia still does not have specific regulations regarding business entities owned by authorities, which has created a legal vacuum regarding the technical regulation of business entities owned by authorities, or what can be called business entities owned by the capital city. The context of this mention is recognized in the ownership of Delhi Metro Rail Corporation Ltd which has a share ownership composition between the Government of India (GOI) and the Government of the National Capital Territory of Delhi (GNCTD) with equal percentages (50% GOI and 50% GNCTD) (Arora, 2019). This context is also recognized in Section 619B of the Companies Act of India, which states that “*The provisions of section 619 shall apply to a company in which not less than fifty-one per cent of the paid-up share capital is held by one or more of the following or any combination thereof, as if it were a*

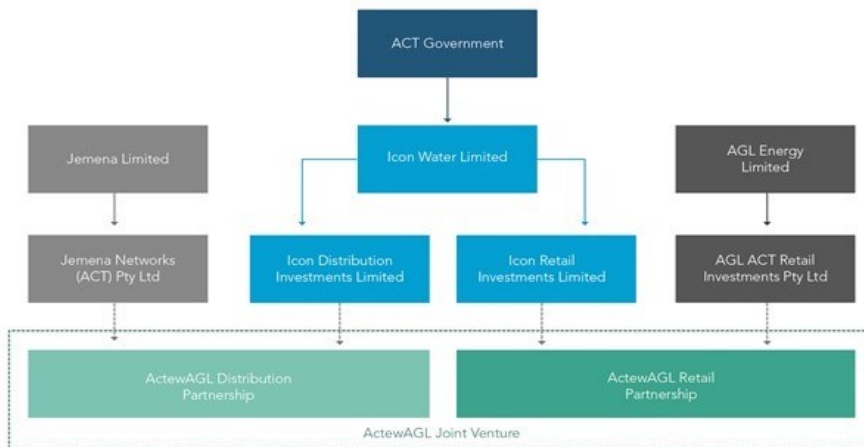
*Government company, namely: (a) the Central Government and one or more Government companies ; (b) any State Government or Governments and one or more Government companies ; (c) the Central Government, one or more State Governments and one or more Government companies ; (d) the Central Government and one or more corporations owned or controlled by the Central Government ; (e) the Central Government, one or more State Governments and one or more corporations owned or controlled by the Central Government ; (f) one or more corporations owned or controlled by the Central Government or the State Government ; (g) more than one Government company".* The regulatory context for the share composition of Delhi Metro Rail Corporation Ltd is included in letter b, which is that the context of Delhi Metro Rail is controlled by two different governments, namely the central government (GOI) and the special government for the capital city of Delhi (GNCTD). Thus, the Indian context already recognizes the regulation of ownership of state-owned enterprises and capital at the statutory level agreed by the Parliament consisting of the Rajya Sabha (Upper House) and the Lok Sabha (Lower House).

In its development, a Government Company in India is defined as a company with a share composition of no more than 51% owned by the central or state government as explained in Section 2 Paragraph (45) of The Companies Act, 2013 which states that "Government company means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company". The context of a government company can be said to be a government company where at least 51% of its shares are controlled by the central government, or state government, or part of which is controlled by the central government and part of it by the state government, and includes subsidiaries of the government company permanently. meets the 51% threshold. Thus, Delhi capital companies are also subject to these provisions in a more closed form, namely limited or whose shares are only owned by the government of India (GOI) and the Delhi government. Although conceptually, 51% share composition is the minimum limit for a company in India to be considered a government company and the remainder (49%) can be filled by other companies using an investment mechanism (Kiranmai & Mishra, 2019). This is similar to the BUMN concept in Indonesia, which also implies a minimum 51% share ownership owned by the government, which is a requirement for a BUMN.

Then at the Australian state level, especially the Australian Capital Territory (ACT), there are business entities owned by the capital city or referred to as Territory-owned enterprises. These business entities in the context of the ACT are determined through the Capital Territory Law as regulated in the Territorial-owned Enterprise Act 1995 of the Australian Capital Territory which regulates companies that own the national capital (Abbott & Cohen, 2014). The law at the territorial level of the capital city comprehensively regulates the rights and obligations of companies belonging to the capital city region. This law specifically regulates Icon Water Limited or companies operating in the water and electricity resources sector. However, this company is a closed or unlisted public company whose shares are only owned by the Australian Capital Territory Government and the Minister of Environment and Heritage (Grafton, 2019). Thus, this company concept is designed to be closed and investment cannot be carried out from outside the ACT or the central government through the Minister of Environment and Heritage.



However, this does not mean that the company's shares cannot be transferred or issued. Shares in the company can be transferred provided that the shareholders, namely the territorial government of the national capital and the Minister of Environment and Heritage wish this, then the transfer or issuance of shares can be carried out. However, only certain people are still entitled to become shareholders apart from these two parties, namely the parties referred to in Section 13 Subsection (4) of the Territory-owned Corporation Act 1990 which states that “A person is eligible to hold a share or a right relating to a share in a territory-owned corporation only if - (a) for a voting share—the person is a Minister and has been authorised under subsection (2); or (b) for a non-voting share— (i) the person has been authorised under subsection (3); or (ii) the person is a territory-owned corporation; or (c) the person is eligible under subsection (9)”. The context of this arrangement requires shareholders who have voting rights other than the territorial government and ministers, namely a Minister or who has served as a minister and is given power as a shareholder by the Chief Minister of the Australian Capital Territory, or to an entity that will be a company owned by the capital city . Then, shareholders who do not have voting rights are parties requested by the regional treasurer to become shareholders without voting rights, and companies owned by the capital city are also shareholders of territory-owned corporations, which in this case is Icon Water. It can be seen that there are very limited opportunities for investors from outside the government to invest in Icon Water. There are several things that Icon Water does with outside parties, but it can take the form of collaboration in the form of a joint venture, namely with Jemena Limited and AGL ACT Retail which created a joint venture in the form of ActewAGL Distribution Partnership and ActewAGL Retail Partnership. The following is the structure and form of collaboration between Icon Water and Jemena Limited and AGL ACT Retail:



Source: Icon Water Website (Icon Water, 2024).

China in the context of state-owned enterprises regulates this comprehensively in the Company Law of the People's Republic of China (2018 Revision) (Li, 2023). The regulatory context requires the existence of a wholly state-owned enterprise, which only recognizes the existence of state-owned companies with shares owned only by the state. This is explained in Article 64 Company Law of the People's Republic of China (2018 Revision) which states that “A *wholly state-owned company*” as mentioned in this Law refers to a limited liability

*company invested wholly by the state, for which the State Council or the local people's government authorizes the state-owned assets supervision and administration institution of the people's government at the same level to perform the functions of the capital contributor*". In this article, it is stated that a state-owned company is defined as a company whose ownership is limited to the government and whose funding only comes from the government (Ruskola, 2019). However, in different regulations, namely in The Law of the People's Republic of China on the State-Owned Assets of Enterprises (Order No. 5 of the President of the People's Republic of China) there is an understanding of state-owned enterprises as distinguished from existing ones. in Company Law of China which only recognizes the existence of wholly state-owned enterprises. In the State-Owned Enterprises Law of China there are different meanings for whole state-owned enterprises and partial state-owned enterprises. Article 5 contains the concept of state-invested enterprise or companies invested by the government, which in this case can be controlling or non-controlling. Article 5 reads that "*The term "state-invested enterprise" as mentioned in this Law refers to a wholly state-owned enterprise or company with the state being the sole investor, or a company in which the state has a stake, whether controlling or non-controlling*". The context of article 5 requires the existence of a wholly state-owned enterprise whose shares are wholly owned by the state and indirectly, the state controls the company, and the company in which state has a stake, whether controlling or non-controlling, which in this case is companies in which the government invests and the government holds ownership shares which can be controlling or non-controlling.

The concept of controlling shareholder is defined as a dominant shareholder who has a larger composition and thus has controlling rights over the company. The controlling stake in a wholly state-owned enterprise and company in which the state has a controlling stake is the government, which gives the government full control over the state-owned company to carry out economic functions and public services for the company to the people. The nature of state-owned enterprise implementation also embodies the interests of the people themselves and its implementation is carried out by the State Council. This is explained in Article 3 of the Law of the People's Republic of China on the State-Owned Assets of Enterprises which reads "*The state-owned assets shall be owned by the state, i.e. owned by the whole people. The State Council shall, on behalf of the state, exercise the ownership of state-owned assets*". From this article, it can be understood that the implementation context of state-owned goods or assets is either invested in all certain companies (by law becoming a wholly state-owned enterprise), or in certain companies and becoming the controlling shareholder (by law becoming a company in which the state has a stake then to be controlling party). Thus, the Chinese concept requires the existence of state-owned enterprises in whole and in part, including state-owned enterprises belonging to the capital city of Beijing.

Beijing as a special region of the capital of the People's Republic of China has several state-owned enterprises where the Beijing government established a company with its own funds to carry out public service functions in Beijing. For example, Beijing has the Beijing State-owned Capital Operation and Management Center, Ltd. which is wholly owned by the Beijing city government (Hu, 2015). All of the company's directors are appointed directly by the government as a logical consequence of the main and controlling shareholders of the company. In this case, the state is the main shareholder, represented by a body that can influence the appointment of directors, namely the state-owned assets supervision and

administration body, which has the right to become an investor on behalf of the state and is supervised by the state council to be a controlling or non-controlling shareholder. controller in a state owned enterprise (Republic of China, 2009). In addition, all main activities of the company must be approved by the Beijing government, or from a body called the Beijing State-owned Assets Supervision and Administration Commission (SASAC). Then the next example is Beijing Shougang Co., Ltd, where 78.28% of its shares are controlled by the Chinese government through the Beijing State-Owned Assets Supervision & Administration (65.09%) and the China State-owned Assets Supervision & Administration Commission (13.19%). Both parties have the right to become controlling shareholders who can influence the composition of the board of directors of the Shougang company itself. This shows that the Beijing government dominates the controlling shareholders of the Beijing Shougang company. Thus, the concept of establishing a state-owned enterprise at the national capital level in China is also subject to the main provisions at the statutory level, namely referring to The Law of the People's Republic of China on the State-Owned Assets of Enterprises (Order No. 5 of the President of the People's Republic of China).

From the explanations above, there are several differences in the concept of state-owned enterprise at the capital city level of each country. In India, the New Delhi City Government has the right to establish a state-owned enterprise like the Delhi Metro Rail Corporation Ltd, but uses a registration mechanism like companies in general. The only thing that differentiates state owned enterprises from companies in general in India is the control of company shares which must be more than 51% (*vide* Section 2 Paragraph (45) The Companies Act of India, 2013). Delhi Metro Rail Corporation Ltd has an equal share composition between the government of India (50%) and the government of the city of New Delhi (50%). Then in the Australian context, the Australian Capital Territory has the right to establish a company owned by the territorial area by forming it through a territorial law passed by the Chief Minister and the Legislature, as is the case with Icon Water which was established and formed using the Territory-owned Corporation Act 1990 and regulates it details about the company. The ownership composition of Icon Water is also fully owned by the government, which in this case is the ACT regional government through the Chief Minister and the central government through the Minister of Environment and Heritage. Then the last one is China which has its own concept by specifically regulating all types of state-owned enterprises (including those belonging to the central, regional and municipality regions of Beijing) into a rule at the statutory level, namely The Law of the People's Republic of China on the State-Owned Assets of Enterprises and does not regulate a rigid percentage of share control which can then be said to be the controlling shareholder. However, China still recognizes the concept of controlling and non-controlling shares in the control of state-owned enterprises, including the Beijing State-owned Capital Operation and Management Center, Ltd. which was established to carry out public services and so on with controlling shares held entirely by the Municipality Government of Beijing.

### **3.2. Concept of Regulation and Planning for Ideal Authority-Owned Enterprises in Realizing Sustainable Development of the Nusantara Capital City**

Indonesia recently moved its capital city from Jakarta to the Nusantara (Hadiningrat, 2023). This transfer also gives great authority to the new capital city government to carry out government functions in boosting investment based on sustainable development through the IKN Law. An extension of this, the IKN authority government is given the authority to establish business entities owned by the authority which is a delegation from the IKN Law

itself. However, the model of the authority's own business entity has not yet been regulated in detail.

From existing regulations, the concept of shareholders in authority-owned business entities has been regulated in Presidential Decree No. 62/2022 which contains the share composition of the government authority itself. This concept can also be in line with what exists in Icon Water Australia where control of this matter only comes from the state government and some from the central government through the Minister of Environment and Heritage. However, on the other hand, the concept in the capital city of the Nusantara also does not rule out the possibility that business entities owned by the authority can be invested by non-government or private companies with an ownership ratio that does not exceed the combination of government ownership shares in one company or even without being the controlling shareholder in the business entity. belongs to the authority. This exists in China where it is referred to as the controlling shareholder of a state-owned enterprise, then the government that holds the dominant shares in a company is the government according to its level (Republic of China, 2018). If it is not a controlling stake, then the company cannot be said to be a state-owned enterprise. This also applies to business entities owned by authorities where the dominant shareholder must be the government, either the authority itself or a combination of controlling share ownership between the authority and the central government and/or BUMN and/or related ministries. Apart from being the controlling shareholder, the government, in this case the authority government, can also invest some of its shares in private companies that exist in the Nusantara's capital region, even as a non-controlling shareholder. This can be done so that the capital city of the Nusantara can receive income from companies in the government of the capital city of the Nusantara apart from the taxes given by these companies through the dividend mechanism. Dividends themselves are company profits given to shareholders every year (Sofiatin, 2020). Furthermore, the proceeds from this income can go into the authority's treasury and can be used for other things that are more beneficial for the development of the IKN authority.

In several concepts recognized in these three countries, the statutes for the establishment of capital-owned business entities are recognized in the Australian context through the establishment of capital city territorial laws. This can be applied by the authority government in establishing an authority-owned business entity. The determination of the head of the authority should also be in the form of a *regeling* so that it can also determine the form of the company and the company's opportunities to be invested by other private companies. Just like Icon Water which is designated as a company owned by the government as a whole with share ownership in the Territory-owned Corporation Act 1990 (Australian Capital Territory, 1990). This regulation is specifically aimed at Icon Water and is also the initial regulation for Icon Water in addition to having to make bylaws for further regulation. further regarding technical matters, such as those related to operations and so on.

The concept of government intervention into the private sphere is aimed at the welfare of society and the realization of a welfare state, especially in terms of achieving a progressive national economy (Arifardhani, 2019). Welfare State Theory or welfare state theory is a theory that requires the state to play an active role in serving the community through public services in order to achieve community welfare (Yunus, 2018). This theoretical concept emerged as a result of the failure of the legalist state system that emerged at the beginning of the 19th century (Levi-Faur, 2023), or the concept of a state that will only move if there are regulations at the level of law that accommodate problems that arise

in society, resulting in a minimal role for the state in serving society (Asmara, 2022). In this case, the country with this concept is nicknamed *nachwasserstaat* or night watchman country. The concept of the country tends to be rigid so that this understanding is abandoned (Butar-Butar & Turisno, 2022). The concept of a welfare state emerged to be able to create a more prominent role for the state and be able to intervene in the lives of its citizens more intensely while still considering human rights and reasonable limits (Nasir et al., 2023). The presence of the State-Owned Enterprise itself was initially designed to provide public services in essential and fundamental sectors as mandated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that "Earth, water and natural resources are contained therein is controlled by the state and used for the greatest prosperity of the people". This can extend to the concept of authority-owned business entities whose functions and duties are only limited to the scope of the authority's territory and profits from authority-owned business entities will also be returned to the state. The investment in his wealth will also come from funding from the authorities, as well as from the central government as well. Thus, the Australian concept can be applied by establishing regulations for the head of the authority to form business entities owned by the authority along with capital participation from the authority's budget.

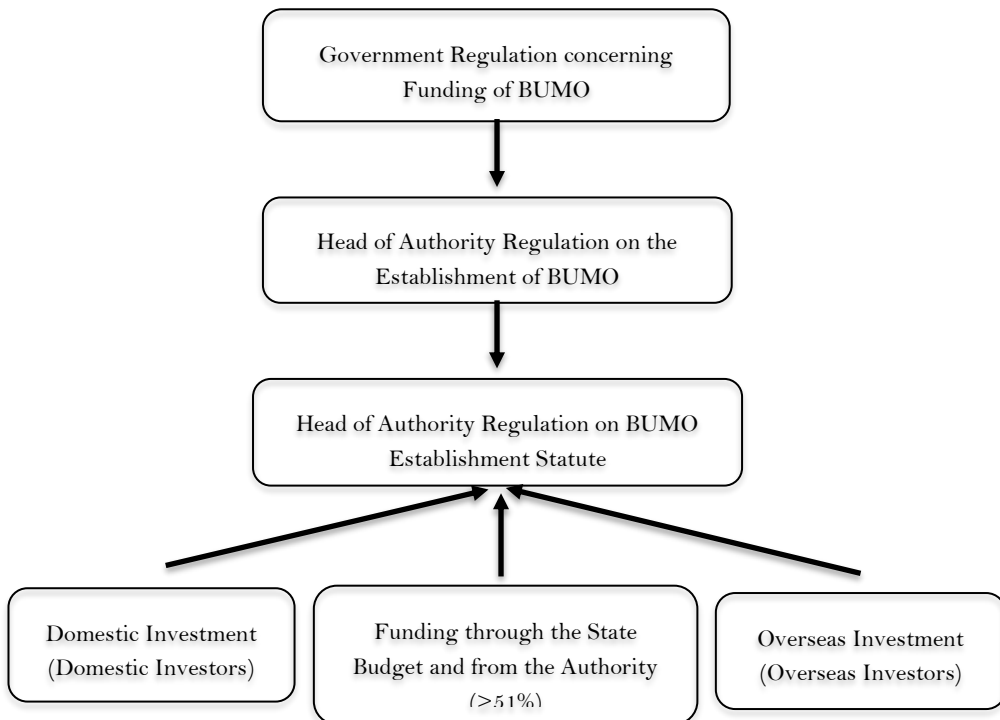
The stipulation of regulations by the Head of the Nusantara Capital Authority is attached to the authority of the head of the authority in issuing them. The concept of the content of the regulations of the head of the IKN authority can be in the form of implementing the provisions of higher regulations, or relating to his authority. The concept of establishing a business entity owned by an authority can be stipulated by the statute of establishment of Authority-Owned Enterprises in the *regeling* regulation of the head of the authority. This concept is in line with the provisions of Article 8 paragraph (2) of Law no. 12 of 2011 concerning the Formation of Legislative Regulations (hereinafter referred to as Law P3) which states that "Legislative regulations as referred to in paragraph (1) are recognized for their existence and have binding legal force as long as they are ordered by higher Legislative Regulations or are formed based on authority". However, the regulations of the head of the authority so far can only be considered as implementing regulations or subordinate legislation which are implementing regulations for the law, namely the IKN Law (Tahir & others, 2022).

The regulatory concept in this article does not yet recognize the existence of head authority regulations. This becomes a question when looking at the position of the head of authority's regulations in terms of review at the Supreme Court. However, until now, the concept of a head of authority regulation is considered a statutory regulation because its substance is *regeling*. Thus, regulations on the statutes of business entities owned by the authority should indeed be regulated at the regional level of the capital city of the Nusantara so that they are covered by law and are of a regulatory nature. Then this becomes a note for legislators to be able to change the provisions of the P3 Law to recognize the regulations of the head of the authority as statutory regulations.

The concept of sustainability is a threat that must be considered in the development process of a region. The concept of sustainable development requires that future generations can enjoy nature and the results of the development that has been carried out (Mas'ari, 2017). Don't just do things that damage the environment and sacrifice it so that the environment becomes damaged. This actually causes a distortion of the concept of sustainability itself. In the case of creating an authority-owned business entity that will be built with a development

perspective, it must be accompanied by a concept of sustainability so that nature is maintained and future generations can still enjoy what has been done now. Thus, the concept of sustainability is very important to apply in the concept of authority-owned business entities in addition to designing them to suit development needs in the capital city of the Nusantara.

Adoption from several countries needs to be carried out for the formation of Authority-Owned Enterprises in Indonesia. The Authority-Owned Enterprises concept can currently be financed through the State Revenue and Expenditure Budget instrument in the form of providing additional state capital participation to Nusantara Capital City Authority business entities (Republic of Indonesia, 2023). However, the government should be able to provide flexibility to business entities owned by the authority to be able to obtain investment from other than the government while still paying attention to the percentage of capital ownership of the authority and the state which must be more than equal to 51% in the Authority-Owned Enterprises. In the case of obtaining funds from parties other than the state, the relevant authorities or business entities can execute agreement instruments. However, in terms of its formation, an authority-owned business entity can be formed through a regulation of the head of the authority while still paying attention to the share composition, where the government, both the authority and the central government, must control 51% of the shares, the remainder is regulated in the Regulation of the Head of the Nusantara Capital Authority. Apart from that, further regulation of business entity funding has not been further regulated in Government Regulations as mandated by Article 24 paragraph (8) of the IKN Law. Thus, the formation of an Authority-Owned Enterprises entity can provide flexibility, especially for the government and investors outside the government to be able to invest capital in the Authority-Owned Enterprises entity. The following is a flowchart of the Authority-Owned Enterprises concept:



#### IV. Conclusion and Recommendation

The conclusion that can be drawn from the discussion is that Indonesia has a State Capital given under Article 18B paragraph (1) which is very large with the enactment of the IKN Law. In addition, through the existing authority, the Head of the Capital City Authority also has the right to establish one of them, the Authority Business Entity, which currently has no specific rules regarding this matter. When reflecting on the concepts that exist in countries that have special capital cities, several models for the establishment of Authority Business Entities can be drawn.

When looking at the concept in India where the establishment of capital city-owned companies is subject to the Company Law of India 2013. The establishment of a capital city-owned company is done by registering the company with the Registrar of Companies such as the Delhi Metro Rail Corporation Ltd. The registration also includes the composition of shareholding and if it is to become a capital-owned company, funds must be injected at least 51% of the total shareholding of the company (*vide* Section 2 Paragraph (45) Company Law of India, 2013). Then, Australia through the Australian Capital Territory has a unique concept of establishing capital-owned enterprises by establishing them through capital territory legislation established by the chief minister in conjunction with the Australian Capital Territory Legislative Assembly. The legislation was the Territory-owned Corporations Act 1990 which established Icon Water Ltd under the Territory Act. The ownership of the company is carried out by the local government and the central government with a composition of 50:50 and both become controlling shareholders. Then in China, the concept of a capital-owned company recognizes the existence of overall state-owned and partial state-owned company ownership. This provision is regulated in the Company Law of China, 2018 which requires the existence of these 2 (two) concepts. In some companies, the Chinese government can be a controlling shareholder, and in some companies, the Chinese government is only a non-controlling shareholder. Both have their own benefits because on the one hand, the Chinese government also benefits through the dividend mechanism.

Indonesia indirectly recognizes the regulation on the composition of shareholders in the Authority Business Entity as stipulated in Presidential Regulation No. 62 of 2022. However, in this case, there is no further regulation regarding the composition of shares. It is different from what exists in China by recognizing the existence of controlling and non-controlling shareholders. In the Chinese concept, it is directly recognized that the government can be a controlling shareholder and can be the main vote holder in the election of company directors and the main policy holder when the company will take major actions. In addition, the Australian concept of using territorial laws can be carried out by the Authority Business Entity in establishing an Authority-Owned Enterprise. The statute of establishment should be in the form of regeling so that it can also determine the form of the company and the opportunity for the company to be invested in by other private companies. The concept of privatization carried out by the government is carried out to achieve the concept of an ideal welfare state in addition to the need for sustainability in the establishment of the business entity. Thus, the establishment of business entities in addition to achieving welfare can also be enjoyed by future generations while still upholding the value of sustainability.

## References

- Abbott, M., & Cohen, B. (2014). A Survey of the Privatisation of Government-Owned Enterprises in Australia since the 1980s. *Australian Economic Review*, 47(4), 432–454. <https://doi.org/10.1111/1467-8462.12072>
- Aisyah, S. N., & others. (2024). Penunjukan Kepala Otorita Ibu Kota Nusantara Menurut Undang-Undang Nomor 3 Tahun 2022. *Prosiding Seminar Hukum Aktual Fakultas Hukum Universitas Islam Indonesia*, 2(1), 87–104.
- Akimov, A., & Simshauser, P. (2020). Performance measurement in Australian water utilities. Current state and future directions. *Australian Journal of Public Administration*, 79(1), 111–142. <https://doi.org/10.1111/1467-8500.12376>
- Arifardhani, Y. (2019). Kemandirian Badan Usaha Milik Negara: Persinggungan Antara Hukum Privat Dan Hukum Publik. *Jurnal Hukum Kenotariatan Otentik's*, 1(1), 54–72.
- Arora, S. (2019). Evaluating the failing transit ridership of the Delhi Metro. *Technische Universitat Munchen*.
- Asmara, G. (2022). Urgensi Kewenangan Diskresi Dalam Penyelenggaraan Pemerintahan Untuk Memajukan Kesejahteraan Umum. *Jurnal Diskresi*, 1(1).
- Australian Capital Territory. (1990). *Territory-owned Corporation Act 1990*. Australian Capital Territory Government.
- Butar-Butar, K. E., & Turisno, B. E. (2022). Juridic Review Of Granting Rights To Flat Units To Foreign Citizens Based On The Provisions Of Legislation In Indonesia. *Awang Long Law Review*, 4(2), 409–418.
- Choudhury, D. K., & Gupta, V. (2023). Determination of Passenger-Carrying Cost of Delhi Redline Metro Using Physical System Theory and Garch Model and the Most Preferred Schedule of Metro Operation. *Transportation in Developing Economies*, 9(2), 13.
- Fauzi, F., & Sujadi, S. (2023). Wewenang Otorita Ibu Kota Nusantara Selaku Pemegang Hak Pengelolaan Kawasan Ibu Kota Nusantara. *Tunas Agraria*, 6(3), 171–186.
- Grafton, R. Q. (2019). Policy review of water reform in the Murray--Darling Basin, Australia: the “do’s” and “do’nots.” *Australian Journal of Agricultural and Resource Economics*, 63(1), 116–141.
- Hadiningrat, K. P. S. S. (2023). Optimalisasi Pemanfaatan Barang Milik Negara Dalam Rangka Pembiayaan Ibu Kota Negara Nusantara. *Jurnal Lemhannas RI*, 11(1), 47–57.
- Haira, H., Faradz, H., & Sanyoto, S. (2022). Juridical Overview of the Mechanism for the Forest Area Release and Investment Facilities for Infrastructure Development in Nusantara Capital City. *Jurnal Dinamika Hukum*, 22(2), 267–285.
- Hu, F. Z. Y. (2015). Industrial capitalisation and spatial transformation in Chinese cities:



- Strategic repositioning, state-owned enterprise capitalisation, and the reproduction of urban space in Beijing. *Urban Studies*, 52(15), 2799–2821.
- Icon Water. (2024). *Who Are We?* <https://www.iconwater.com.au/about-us/who-are-we#:~:text=Icon Water Limited is an,and the bulk of Queanbeyan>.
- Kiranmai, J., & Mishra, R. K. (2019). Corporate governance practices in listed state-owned enterprises in India: An empirical research. *Indian Journal of Corporate Governance*, 12(1), 94–121.
- Levi-Faur, D. (2023). The regulatory security state as a risk state. *Journal of European Public Policy*, 30(7), 1458–1471.
- Li, H. Y. (2023). Understanding the Corporate Governance of China's State-Owned Enterprises in the Context of the State-Owned Enterprises Reform: The Party, the State, and the Enterprises. *Ohio St. Bus. LJ*, 17, 210.
- Lukito, R. (2022). "Compare But Not to Compare": Kajian Perbandingan Hukum di Indonesia. *Undang: Jurnal Hukum*, 5(2), 257–291.
- Marzuki, P. M. (2017). *Penelitian Hukum: Edisi Revisi*. Prenada Media.
- Mas'ari, A. (2017). Sustainable Development Perspektif Maqashid Al-Syari'ah. *Seminar Nasional Teknologi Informasi Komunikasi Dan Industri*, 716–721.
- Mustaqim, A. H. (2022). Mengonstruksi Masa Depan Indonesia: Situasi Retorikal tentang Ibu Kota Negara Nusantara. *Jurnal Komunika Islamika: Jurnal Ilmu Komunikasi Dan Kajian Islam*, 9(1), 1. <https://doi.org/10.37064/jki.v9i1.12066>
- Musu, C. A., Prasetyo, M. A., Adhie, A. J., Gustawinata, M. A., & Marwandy, M. I. (2022). Undang-Undang Ibu Kota Negara Baru: Perdebatan Kecacatan Formil dan Materil pada Aturannya. *Iblam Law Review*, 2(2), 79–97.
- Nasir, M., Khoiriyah, E., Pamungkas, B. P., Hardianti, I., & Zildjianda, R. (2023). Kedudukan Hukum dalam Mewujudkan Keadilan dan Kesejahteraan di Indonesia. *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam*, 5(1), 241–254.
- Nasution, B. J. (2008). *Metode Penelitian Ilmu Hukum*. Bandar Maju.
- Nugroho, D. (2022). Bentuk dan Kekhususan Ibu Kota Negara Nusantara dalam Negara Kesatuan Republik Indonesia. *The Indonesian Journal of Politics and Policy (IJPP)*, 4(1), 53–62.
- Nugrohosudin, E. (2022). Kedudukan Kepala Otorita Ibu Kota Nusantara dalam Undang-Undang Nomor 3 Tahun 2022. *Jurnal Legislatif*.
- President of Indonesia. (2022). *Presidential Regulation No. 62 of 2022 concerning Nusantara Capital Authority*. Presiden Republik Indonesia.
- Purwaningsih, A., Lubis, S. W., Hermawan, E., Andarini, D. F., Harjana, T., Ratri, D. N., Ridho, A., & Sujalu, A. P. (2022). Moisture Origin and Transport for Extreme Precipitation over Indonesia's New Capital City, Nusantara in August 2021. *Atmosphere*, 13(9), 1391.

- Rachmawati, R., Haryono, E., & Rohmah, A. A. (2021). Developing Smart City in the New Capital of Indonesia. *2021 IEEE International Smart Cities Conference (ISC2)*, 1-7.
- Republic of China. (2009). *Law of the People's Republic of China on the State-Owned Assets of Enterprises*. People's Republic of China.
- Republic of China. (2018). *Company Law of the People's Republic of China*. People's Republic of China.
- Republic of Indonesia. (2023). *Law No. 21 of 2023 concerning Amendments of Law No. 3 of 2022 concerning National Capital Citylic of Indonesia*. Kementerian Sekretariat Negara Republik Indonesia.
- Ruskola, T. (2019). People, Inc.? Law, Economic Enterprise, and the Development of Inequality in China. *The American Journal of Comparative Law*, 67(2), 383-434.
- Sofiatin, D. A. (2020). Pengaruh profitabilitas, leverage, likuiditas, ukuran perusahaan, kebijakan deviden terhadap nilai perusahaan (studi empiris pada perusahaan manufaktur subsektor industri dan kimia yang terdaftar di BEI periode 2014-2018). *Prisma (Platform Riset Mahasiswa Akuntansi)*, 1(1), 47-57.
- Sulistiono, L., & Wardana, D. J. (2023). Aspek Hukum Kedudukan Kepala Otorita Dalam Perspektif Pemerintahan Daerah Di Indonesia. *UNES Law Review*, 5(4), 2677-2688.
- Syahnaz, A. Y. (2021). Korelasi Negara Kesejahteraan Dengan Demokratisasi Kehidupan Masyarakat sebagai Wujud Negara Paripurna. *Spektrum Hukum*, 18(1).
- Tahir, E., & others. (2022). KEDUDUKAN PERATURAN OTORITA IBU KOTA NUSANTARA DALAM SISTEM PERATURAN PERUNDANG-UNDANGAN. *Jurnal Hukum Positum*, 7(2), 314-341.
- Yunus, N. R. (2018). Aktualisasi Welfare State Terhadap Kehidupan Bernegara Dalam Dimensi Keislaman dan Keindonesiaan. *Mizan: Journal of Islamic Law*, 3(2).